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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,775	09/27/2001	Danny D. Lowe	01-313-US-D	3431
7590 02/07/2005 Cheryl L. Gastineau REED SMITH LLP P.O. BOX 488 PITTSBURGH, PA 15230			EXAMINER LEE, JOHN J	
			ART UNIT	PAPER NUMBER
			2684	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,775

Applicant(s)

LOWE ET AL.

Examiner

JOHN J LEE

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59,60,62-65,85 and 86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 59,60,62-65 and 86 is/are rejected.
- 7) ☒ Claim(s) 85 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments/Amendment

1. Applicant's arguments/amendments received on June 30, 2004 have been carefully considered but they are not persuasive because the teaching of all the cited references reads on all the rejected claims with new amended claims as set forth in the pervious rejection. Therefore, the finality of this Office Action is deemed proper.

Contrary to the assertions at pages 4 - 5 of the Arguments, claims 59 is not patentable.

The claim does not require or limit, as during examination the USPTO must give claims their broadest reasonable interpretation.

Re claim 59: Applicant argues that the Testani et al. (US Patent number 5,852,506) does not teach the claimed invention "the particular transmission channel cannot be switched by the user of the one remote receiver until a predetermined criterion related to the transmitted data has been met". However, The Examiner respectfully disagrees with Applicant's assertion that the Testani does not teach the claimed invention. Contrary to Applicant's assertion, the Examiner is of the opinion that Testani teaches the transmitter system transmits commands to the receiver that allow the receiver to lock onto a particular channel, there being select channels for a given zone/certain area and a sensor at each of locations can sense the presence of the user, such that a program on one channel can be started at one time, the receiver locked on that channel and then a subsequent receiver commanded to go to a different channel to receive a program started at another time (see column 15, lines 9 – 65, abstract, and Fig. 1, 11b), regarding the claimed limitation. More specifically, the transmitter controls on the remote receiver to lock onto a particular channel

(program), until a predetermined criterion (a synchronization change has occurred (if the remote receiver is not in the area/zone (out of the range, area, or zone) or could be anything). Also, the claimed limitation does not require or limit that the predetermined criterion is a specific indication.

The Applicant also argues that Testani does not teach the claimed limitation “reactivating any disabled control on the remote receiver in response to having met the predetermined criterion related to the transmitted data”. However, The Examiner respectfully disagrees with Applicant’s assertion that the Testani does not teach the claimed invention. Contrary to Applicant’s assertion, Testani teaches the program will then flow back to the input of decision whether synchronization change or not and continue along this path, and this won’t occur until a synchronization change has occurred and the channel is unlocked at function unlock channel and then program will flow to function set channel lock to set the new channel (see column 15, lines 9 – 47, Fig. 1, 11b, and column 1, lines 57 – column 2, lines 39), regarding the claimed limitation. More specifically, when the predetermined criterion (a synchronization change has occurred (if the remote receiver is not in the area/zone (out of the range, area, or zone) or could be anything) related to the transmitting program has been met, the channel has been unlocked and mobile receiver initiates the program will be provided a second channel select command or reactivating the other control.

Applicant’s attention is directed to the rejection below for the reasons as to why this limitation is not patentable.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 59, 60, 62-65, and 86** are rejected under 35 U.S.C. 102(b) as being anticipated by Testani et al. (US patent number 5,852,506).

Regarding **claim 59**, Testani discloses that a transmitter (Fig. 1 and column 3, lines 24 - 65). Testani teaches that means for transmitting data to at least one of a plurality of remote receivers (24, 26, 30, 36 in Fig. 1) over a particular transmission channel (Fig. 12, column 1, lines 57 – column 2, lines 45, and abstract, where teaches the transmitter transmits commands to the receiver that the allow the receiver to lock onto a particular channel). Testani teaches that means for controllably disabling at least one control on the one remote receiver (24, 26, 30, 36 in Fig. 1) (a listener only necessary to allow the user to move, far enough out of the range of Zone 1 to allow it to receive only on channel 1 see Fig. 12) so that the particular transmission channel cannot be switched by a user of the one remote receiver (Fig. 1, 12, 14, column 1, lines 57 – column 2, lines 45, and column 15, lines 9 – 65, where teaches once selected the particular channel, the channel is locked and pulse width changes thereafter will not change it) until a predetermined criterion related to the transmitted data has been met (column 15, lines 9 – 65, abstract, and Fig. 1, 11b, where teaches the transmitter controls on the remote receiver to lock onto a particular channel (program), until a predetermined criterion (a

synchronization change has occurred (if the remote receiver is not in the area/zone (out of the range, area, or zone) or could be anything). Also, the claimed limitation does not require or limit that the predetermined criterion is a specific indication). Testani teaches that means for reactivating any disabled control on the remote receiver in response to having met the predetermined criterion related to the transmitted data (column 15, lines 9 – 47, Fig. 1, 11b, and column 1, lines 57 – column 2, lines 39, where teaches when the predetermined criterion (a synchronization change has occurred (if the remote receiver is not in the area/zone (out of the range, area, or zone) or could be anything) related to the transmitting program has been met, the channel has been unlocked and mobile receiver initiates the program will be provided a second channel select command or reactivating the other control).

Regarding **claim 60**, Testani discloses that the data originates from at least one of a plurality of different input sources selected from the group consisting of TV, cable, VCR, DVD, satellite broadcast, telephone, and database (column 1, lines 26 – 54 and Fig. 1).

Regarding **claim 62**, Testani discloses that means for detecting a presence of a user in proximity to said transmitter (abstract, Fig. 1, 12, and column 5, lines 11 – column 6, lines 8).

Regarding **claim 63**, Testani discloses that means for tuning the one remote receiver to the particular channel based on a momentary connection between the receiver and the transmitter (Fig. 1, 5, 12, abstract, and column 6, lines 20 – 49).

Regarding **claim 64**, Testani discloses that means for tuning the one remote receiver to the particular channel based on a control signal exchanged between the receiver and the transmitter (Fig. 1, 14 and column 18, lines 27 – column 19, lines 52).

Regarding **claim 65**, Testani discloses that a sensor and wherein a mode of operation of sensor is chosen from the group consisting of ultrasound, motion, IR, sound, light, applied manual pressure, heat, and air pressure (Fig. 1, 13, 16 and column 17, lines 34 – 67, where teaches the sensor is chosen from the motion sensor, electric eye, or other such device).

Regarding **claim 86**, Testani discloses that the predetermined criterion is a passage of a predetermined amount of time the transmitted data is delivered (Fig. 14, column 18, lines 27 – column 19, lines 39, and column 1, lines 57 – column 2, lines 39, where teaches a predetermined time after the first mobile receiver initiates the program will be provided).

Allowable Subject Matter

4. Claims 85 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record fails to disclose “the predetermined criterion, that is the delivery of a predetermined number of advertisements to a particular user, related to the transmitted data has been met” as specified in the claims.

Art Unit: 2684

Conclusion

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
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or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 308-6606 (for informal or draft communications, please label
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John J. Lee** whose telephone number is **(703) 306-5936**. He can normally be reached Monday-Thursday and alternate Fridays from 8:30am-5:00 pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, **Nay Aung Maung**, can be reached on **(703) 308-7745**. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700.

J.L
January 28, 2005

John J Lee


NICK CORSARO
PRIMARY EXAMINER